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OFFICE OF PETITIONS

In re Patent No. 7,364,844	: DECISION ON APPLICATION FOR
Issued: April 29, 2008	: PATENT TERM ADJUSTMENT and
Application No. 10/019,434	: NOTICE OF INTENT TO ISSUE
Filed or 371(c) date: May 7, 2002	: CERTIFICATE OF CORRECTION
Dkt. No.: 03715.0102	:

This is a decision on the "CANDOR STATEMENT REGARDING PATENT TERM ADJUSTMENT," filed on June 25, 2008. This matter is being treated under 37 CFR 1.705(d) as a timely filed application for patent term adjustment. The fee required at 37 CFR 1.18(e) has been charged to the authorized deposit account.

This is also a decision on the "PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER OF THE REQUIREMENT OF UNDER 37 C.F.R. § 1.705(d)," filed October 24, 2008.

DECISION UNDER 37 CFR 1.183

The petition under 37 CFR 1.183 requests waiver of the two month time period for submission of a request for reconsideration of patent term adjustment pursuant to 37 CFR 1.705(d).

A petition pursuant to 37 CFR 1.705(d) is deemed to have been timely filed June 25, 2008 in view of the authorization to charge the required patent term adjustment application fee contained therein:

Accordingly, in this instance, waiver pursuant to 37 CFR 1.183 is unnecessary.

In view thereof, the petition under 37 CFR 1.183 is DISMISSED.

DECISION UNDER 37 CFR 1.705(d)

The application for patent term adjustment is GRANTED TO THE EXTENT INDICATED HEREIN.

In view of the request for reconsideration of the patent term adjustment filed June 25, 2008, the entire record has been carefully reviewed and the determinations that follow have been made.

The patent is entitled to an overall adjustment of 707 days pursuant to 37 CFR 1.702(a).

The patent is entitled to an adjustment of 386 days pursuant to 37 CFR 1.702(a) in connection with the restriction requirement mailed July 27, 2004.

The patent is entitled to an adjustment of 234 days pursuant to 37 CFR 1.702(a)(2) in connection with the non-final Office action mailed July 24, 2006.

The patent is entitled to an adjustment of 87 days pursuant to 37 CFR 1.702(a)(4) in connection with the issuance of the patent on April 29, 2008.

The patent is entitled to an overall adjustment of 1,213 pursuant to 37 CFR 1.702(b).

The calculation of delay pursuant to 37 CFR 1.702(b) is based on a national stage commencement date of January 2, 2002. As the expiration of the 30-month period pursuant to 35 U.S.C. 371(b) fell on a holiday, the period expired on the subsequent business day. See, PCT Rule 80.5. Accordingly, the commencement date is January 2, 2002. Thus, the period of over three year delay commenced January 3, 2005, the day after the date that is the day after the date that is three years after the commencement date, and ended April 29, 2008, the date that the patent issued.

The patent is not entitled to adjustment for days accrued under 37 CFR 1.702(a) that overlap with days that accrued under 37 CFR 1.702(b).

The overlapping days total 321 days (87 days from February 3, 2008 to April 29, 2008 and 234 days from December 3, 2005 to July 24, 2006).

As previously established, the period of applicant delay totals 209 days (61 days under 37 CFR 1.704(b) in connection with the reply filed December 27, 2004 + 56 days under 37 CFR 1.704(b) in connection with the reply filed August 2, 2005 + 92 days under 37 CFR 1.704(b) in connection with the reply filed January 24, 2007).

Accordingly, the patent is entitled to an overall adjustment of 1,390 days (707 days under 37 CFR 1.702(a) + 1,213 days under 37 CFR 1.702(b) - 209 days of applicant delay – 321 overlapping days).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **1,390** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,364,844

DATED : April 29, 2008

DRAFT

INVENTOR(S): Tournier-Lasserve, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1,113 days

Delete the phrase "by 1,113 days" and insert – by 1,390 days--